

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Beatriz H. Coleman, *et al.*,

Plaintiffs,

v.

Case No. 09-10640

Chase Bank USA, N.A., *et al.*,

Honorable Sean F. Cox

Defendants.

ORDER OF DISMISSAL

Plaintiffs Beatriz H. Coleman and John T. Coleman, represented by attorney Francois M. Nabwangu, filed this action in state court, asserting claims against Defendants Chase Bank USA, N.A. and Chase Home Finance, LLC relating to the underlying mortgage on a home (“the Property”). Defendants removed the action to this Court on February 20, 2009.

On March 4, 2009, Plaintiffs filed a Motion for Temporary Restraining Order, seeking to prevent Defendants from proceeding with foreclosure proceedings. The parties then stipulated to a March 10, 2009 Preliminary Injunction & Escrow Order, under which they agreed that: 1) Defendants would not seek possession of the Property until this litigation is resolved, or further order of the Court; and 2) an escrow account shall be created by the Plaintiffs at the Clerk of the Court and Plaintiffs would then deposit \$2,800.00 each month, on or before the first day of each month, into the escrow account until the Court orders otherwise.

At a subsequent conference with the parties, however, Defense Counsel advised the Court that Plaintiffs are not making the agreed upon escrow payments. The Clerk of the Court has confirmed that, as of today’s date, *no funds have ever been deposited by Plaintiffs*.

At a status conference, Plaintiffs’ Counsel verbally advised the Court that Beatriz H.

Coleman filed for bankruptcy during this action.

On May 13, 2009, Defendants filed a Motion to Dismiss. The Court set that motion for hearing on August 20, 2009. Plaintiffs did not file any response to Defendant's Motion to Dismiss.

On June 16, 2009, the parties agreed that John T. Coleman's claims in this action would be dismissed with prejudice. (Docket Entry No. 26). The parties further agreed that John T. Coleman would "provide and participate in discovery" in this action following his dismissal. (*Id.*).

Later, Plaintiffs' Counsel informally indicated to the Court that he believes that this action is subject to an automatic bankruptcy stay. Defense Counsel disagreed, noting that the alleged bankrupt party is the *plaintiff* in this action, not the *defendant*. Accordingly, on July 1, 2009, this Court issued an Order requiring Plaintiff to submit a written brief no later than July 10, 2009, providing authority for Plaintiff Beatriz H. Coleman's position that her claims in this action are subject to an automatic stay. The Order further provided that Defendants were to file a response to that brief by July 24, 2009. Plaintiff's Counsel failed to file the brief as ordered.

Given Plaintiff's failure to comply with the terms of the stipulated Preliminary Injunction & Escrow Order, her failure to file any response to the pending Motion to Dismiss, and her failure to file a brief in response to this Court's July 1, 2009 Order, the Court issued a Show Cause Order on July 15, 2009, requiring Plaintiff Beatriz H. Coleman to show cause, in writing, no later than July 17, 2009, why this Court should not immediately dissolve the Preliminary Injunction & Escrow Order and dismiss this action for failure to prosecute. Plaintiff failed to respond to that order as well.

Accordingly, **IT IS ORDERED** that: 1) the March 10, 2009 Preliminary Injunction and

Escrow Order is hereby **DISSOLVED**; and 2) this action is dismissed for failure to prosecute.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: July 21, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on July 21, 2009, by electronic and/or ordinary mail.

S/Jennifer Hernandez

Case Manager